

OCT 05 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS LUNA-GARCIA

Defendant - Appellant.

No. 08-30471

D.C. No. 9:03-cr-00053-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted September 14, 2009^{**}

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Jose Luis Luna-Garcia appeals pro se from the district court's order denying his motion for reduction or review of sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Luna-Garcia contends that the district court erred in denying his motion for a reduction of sentence and a review of sentence pursuant to 18 U.S.C. § 3582 and 18 U.S.C. § 3742. The district court properly concluded that it lacked authority to resentence him. *See United States v. Townsend*, 98 F.3d 510, 513 (9th Cir. 1996) (per curiam).

To the extent that Luna-Garcia seeks relief pursuant to Fed. R. Crim. P. 33, this claim was also properly denied by the district court. *See* Fed. R. Crim. P. 33; *see also United States v. McKinney*, 952 F.2d 333, 336 (9th Cir. 1991).

To the extent that Luna-Garcia challenges the district court's dismissal of his 28 U.S.C. § 2255 motion, we construe this as a motion to broaden the certificate of appealability, and deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.